

**IC 31-17**

**ARTICLE 17. FAMILY LAW: CUSTODY AND VISITATION RIGHTS**

**IC 31-17-1**

Chapter 1. General Provisions

**IC 31-17-1-1**

**Construction and application**

Sec. 1. This chapter, IC 31-17-2, IC 31-17-4, IC 31-17-6, and IC 31-17-7 shall be construed and applied to promote the purpose and policy of this chapter, IC 31-17-2, IC 31-17-4, IC 31-17-6, and IC 31-17-7.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-1-2**

**Purpose and policy**

Sec. 2. The purpose and policy of this chapter, IC 31-17-2, IC 31-17-4, IC 31-17-6, and IC 31-17-7 are to provide for child custody.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-2**

### **Chapter 2. Actions for Child Custody and Modification of Child Custody Orders**

## **IC 31-17-2-1**

### **Jurisdiction**

Sec. 1. Jurisdiction of a child custody proceeding under:

(1) this chapter, IC 31-17-4, IC 31-17-6, and IC 31-17-7; or

(2) IC 31-21 (or IC 31-17-3 before its repeal);

shall be determined under IC 31-21 (or IC 31-17-3 before its repeal).

*As added by P.L.1-1997, SEC.9. Amended by P.L.138-2007, SEC.34.*

## **IC 31-17-2-2**

### **Application of Indiana Rules of Civil Procedure**

Sec. 2. Proceedings under this chapter, IC 31-17-4, IC 31-17-6, and IC 31-17-7 must comply with the Indiana Rules of Civil Procedure.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-2-3**

### **Commencement of proceeding**

Sec. 3. A child custody proceeding is commenced in the court by:

(1) a parent by filing a petition under IC 31-15-2-4, IC 31-15-3-4, or IC 31-16-2-3; or

(2) a person other than a parent by filing a petition seeking a determination of custody of the child.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-2-4**

### **Repealed**

*(Repealed by P.L.50-2006, SEC.9.)*

## **IC 31-17-2-5**

### **Responsive pleading or counter petition**

Sec. 5. A responsive pleading or a counter petition may be filed under this chapter, IC 31-17-4, IC 31-17-6, or IC 31-17-7.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-2-6**

### **Hearing**

Sec. 6. Custody proceedings must receive priority in being set for hearing.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-2-7**

### **Court to determine law and facts**

Sec. 7. The court without a jury shall determine questions of law and fact.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-8**

#### **Custody order**

Sec. 8. The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
  - (A) the child's parent or parents;
  - (B) the child's sibling; and
  - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
  - (A) home;
  - (B) school; and
  - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

*As added by P.L.1-1997, SEC.9. Amended by P.L.96-1999, SEC.7; P.L.133-2002, SEC.32.*

### **IC 31-17-2-8.3**

#### **Supervised parenting time; conviction of crime involving domestic or family violence; batterer's intervention program**

Sec. 8.3. (a) This section applies if a court finds that a noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the noncustodial parent's child.

(b) There is created a rebuttable presumption that the court shall order that the noncustodial parent's parenting time with the child must be supervised:

- (1) for at least one (1) year and not more than two (2) years immediately following the crime involving domestic or family violence; or
- (2) until the child becomes emancipated;

whichever occurs first.

(c) As a condition of granting the noncustodial parent unsupervised parenting time, the court may require the noncustodial parent to complete a batterer's intervention program certified by the Indiana coalition against domestic violence.

*As added by P.L.133-2002, SEC.33. Amended by P.L.68-2005,*

*SEC.32; P.L.162-2011, SEC.12.*

#### **IC 31-17-2-8.5**

##### **Consideration of de facto custodian factors**

Sec. 8.5. (a) This section applies only if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian.

(b) In addition to the factors listed in section 8 of this chapter, the court shall consider the following factors in determining custody:

- (1) The wishes of the child's de facto custodian.
- (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
- (3) The intent of the child's parent in placing the child with the de facto custodian.
- (4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent now seeking custody to:
  - (A) seek employment;
  - (B) work; or
  - (C) attend school.

(c) If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding.

(d) The court shall award custody of the child to the child's de facto custodian if the court determines that it is in the best interests of the child.

(e) If the court awards custody of the child to the child's de facto custodian, the de facto custodian is considered to have legal custody of the child under Indiana law.

*As added by P.L.96-1999, SEC.8.*

#### **IC 31-17-2-9**

##### **Court interview of child in chambers**

Sec. 9. (a) The court may interview the child in chambers to ascertain the child's wishes.

(b) The court may permit counsel to be present at the interview. If counsel is present:

- (1) a record may be made of the interview; and
- (2) the interview may be made part of the record for purposes of appeal.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-10**

##### **Professional personnel; court consultation; cross-examination**

Sec. 10. (a) The court may seek the advice of professional personnel even if the professional personnel are not employed on a regular basis by the court. The advice shall be given in writing and made available by the court to counsel upon request.

(b) Counsel may call for cross-examination of any professional

personnel consulted by the court.  
*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-11**

#### **Temporary custodian**

Sec. 11. (a) If, in a proceeding for custody or modification of custody under IC 31-15, this chapter, IC 31-17-4, IC 31-17-6, or IC 31-17-7, the court:

- (1) requires supervision during the noncustodial parent's parenting time privileges; or
  - (2) suspends the noncustodial parent's parenting time privileges;
- the court shall enter a conditional order naming a temporary custodian for the child.

(b) A temporary custodian named by the court under this section receives temporary custody of a child upon the death of the child's custodial parent.

(c) Upon the death of a custodial parent, a temporary custodian named by a court under this section may petition the court having probate jurisdiction over the estate of the child's custodial parent for an order under IC 29-3-3-6 naming the temporary custodian as the temporary guardian of the child.

*As added by P.L.1-1997, SEC.9. Amended by P.L.68-2005, SEC.33.*

### **IC 31-17-2-12**

#### **Investigation and report concerning custodial arrangements for child**

Sec. 12. (a) In custody proceedings after evidence is submitted upon the petition, if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by any of the following:

- (1) The court social service agency.
- (2) The staff of the juvenile court.
- (3) The local probation department or, if the child is the subject of a child in need of services case under IC 31-34, the department of child services.
- (4) A private agency employed by the court for the purpose.
- (5) A guardian ad litem or court appointed special advocate appointed for the child by the court under IC 31-17-6 (or IC 31-1-11.5-28 before its repeal).

(b) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian. However, the child's consent must be obtained if the child is of sufficient age and capable of forming rational and independent judgments. If the requirements of subsection (c) are

fulfilled, the investigator's report:

- (1) may be received in evidence at the hearing; and
- (2) may not be excluded on the grounds that the report is hearsay or otherwise incompetent.

(c) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days before the hearing. The investigator shall make the following available to counsel and to any party not represented by counsel:

- (1) The investigator's file of underlying data and reports.
- (2) Complete texts of diagnostic reports made to the investigator under subsection (b).
- (3) The names and addresses of all persons whom the investigator has consulted.

(d) Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party to the proceeding may not waive the party's right of cross-examination before the hearing.

*As added by P.L.1-1997, SEC.9. Amended by P.L.146-2008, SEC.558.*

### **IC 31-17-2-13**

#### **Joint legal custody; finding required for award**

Sec. 13. The court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-14**

#### **Joint legal custody; division of physical custody**

Sec. 14. An award of joint legal custody under section 13 of this chapter does not require an equal division of physical custody of the child.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-15**

#### **Joint legal custody; matters considered in making award**

Sec. 15. In determining whether an award of joint legal custody under section 13 of this chapter would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:

- (1) the fitness and suitability of each of the persons awarded joint custody;
- (2) whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare;
- (3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age;
- (4) whether the child has established a close and beneficial

- relationship with both of the persons awarded joint custody;
- (5) whether the persons awarded joint custody:
    - (A) live in close proximity to each other; and
    - (B) plan to continue to do so; and
  - (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

*As added by P.L.1-1997, SEC.9. Amended by P.L.3-2008, SEC.237.*

#### **IC 31-17-2-16**

##### **Counseling for child**

Sec. 16. Upon:

- (1) the court's own motion;
- (2) the motion of a party;
- (3) the motion of the child;
- (4) the motion of the child's guardian ad litem; or
- (5) the motion of the court appointed special advocate;

the court may order the custodian or the joint custodians to obtain counseling for the child under such terms and conditions as the court considers appropriate.

*As added by P.L.1-1997, SEC.9. Amended by P.L.129-2005, SEC.2.*

#### **IC 31-17-2-17**

##### **Custodian may determine child's upbringing**

Sec. 17. (a) Except:

- (1) as otherwise agreed by the parties in writing at the time of the custody order; and
- (2) as provided in subsection (b);

the custodian may determine the child's upbringing, including the child's education, health care, and religious training.

(b) If the court finds after motion by a noncustodial parent that, in the absence of a specific limitation of the custodian's authority, the child's:

- (1) physical health would be endangered; or
- (2) emotional development would be significantly impaired;

the court may specifically limit the custodian's authority.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-18**

##### **Continuing supervision**

Sec. 18. If both parents or all contestants agree to the order or if the court finds that, in the absence of the order, the child's physical health might be endangered or the child's emotional development significantly impaired, the court may order:

- (1) the court social service agency;
- (2) the staff of the juvenile court;
- (3) the local probation department; or
- (4) a private agency employed by the court for that purpose;

to exercise continuing supervision over the case to assure that the custodial or parenting time terms of the decree are carried out.

*As added by P.L.1-1997, SEC.9. Amended by P.L.68-2005, SEC.34;*

*P.L.146-2008, SEC.559.*

#### **IC 31-17-2-19**

##### **Travel and other expenses of witnesses**

Sec. 19. The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court considers necessary to determine the best interests of the child.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-20**

##### **Confidentiality of interview, report, or investigation**

Sec. 20. If the court finds it necessary to protect the child's welfare that the record of any interview, a report, or an investigation in a custody proceeding not be a public record, the court may make an appropriate order accordingly.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-21**

##### **Modification of child custody order**

Sec. 21. (a) The court may not modify a child custody order unless:

- (1) the modification is in the best interests of the child; and
- (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8 and, if applicable, section 8.5 of this chapter.

(b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

(c) The court shall not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by section 8 and, if applicable, section 8.5 of this chapter.

*As added by P.L.1-1997, SEC.9. Amended by P.L.96-1999, SEC.9.*

#### **IC 31-17-2-21.3**

##### **Parent's active duty service not a factor; temporary modification of custody**

Sec. 21.3. (a) A court may not consider a parent's absence or relocation due to active duty service as a factor in determining custody or permanently modifying a child custody order.

(b) If a court temporarily modifies a custody order due to a parent's active duty service, the order temporarily modifying the custody order terminates automatically not later than ten (10) days after the date the parent notifies the temporary custodian in writing that the parent has returned from active duty service. This subsection does not prevent a court from modifying a child custody order as provided under this article after a parent returns from active duty service.

*As added by P.L.80-2010, SEC.45.*



### **IC 31-17-2-21.5**

#### **Security, bond, or guarantee**

Sec. 21.5. The court may provide in:

- (1) a custody order; or
- (2) a modification to a custody order;

for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the custody order.

*As added by P.L.171-2001, SEC.11.*

### **IC 31-17-2-21.7**

#### **Security, bond, or guarantee; determinations**

Sec. 21.7. (a) The court shall consider requiring security, a bond, or another guarantee under section 21.5 of this chapter if the court makes a finding under subdivision (1), (2), (4), or (7) by clear and convincing evidence. If the court makes a finding under subdivision (1), (2), (4), or (7), the court shall also consider subdivisions (3), (5), (6), (8), and (9) in determining the amount of security, bond, or other guarantee. In making a determination under this section, the court shall consider the following:

- (1) Whether a party has previously taken a child out of Indiana or another state in violation of a custody, parenting time, or visitation order.
- (2) Whether a party has previously threatened to take a child out of Indiana or another state in violation of a custody, parenting time, or visitation order.
- (3) Whether a party has strong ties to Indiana.
- (4) Whether a party:
  - (A) is a citizen of another country;
  - (B) has strong emotional or cultural ties to the other country;
  - and
  - (C) has indicated or threatened to take a child out of Indiana to the other country.
- (5) Whether a party has friends or family living outside Indiana.
- (6) Whether a party does not have a financial reason to stay in Indiana, such as whether the party is unemployed, able to work anywhere, or is financially independent.
- (7) Whether a party has engaged in planning that would facilitate removal from Indiana, such as quitting a job, selling the party's primary residence, terminating a lease, closing an account, liquidating other assets, hiding or destroying documents, applying for a passport, applying for a birth certificate, or applying for school or medical records.
- (8) Whether a party has a history of marital instability, a lack of parental cooperation, domestic violence, or child abuse.
- (9) Whether a party has a criminal record.

After considering evidence, the court shall issue a written determination of security, bond, or other written guarantee supported by findings of fact and conclusions of law.

(b) If a motion for change of judge or change of venue is filed, the court may, before a determination of change of judge or change of

venue, consider security, bond, or other guarantee under this chapter.  
*As added by P.L.171-2001, SEC.12. Amended by P.L.68-2005, SEC.35.*

#### **IC 31-17-2-22**

##### **Custodial parent's violation of injunction or temporary restraining order considered in custody modification**

Sec. 22. An intentional violation by a custodial parent of an injunction or a temporary restraining order issued under IC 31-17-4-4 or IC 31-17-4-5 (or IC 31-1-11.5-26 before its repeal) may be considered a relevant factor under section 8 of this chapter that the court must consider in a proceeding for a custody modification under section 21 of this chapter.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-23**

##### **Repealed**

*(Repealed by P.L.50-2006, SEC.9.)*

#### **IC 31-17-2-24**

##### **Notice of passport application for child**

Sec. 24. (a) If either party to the custody order applies for a passport for the child, the party who applies for the child's passport shall do the following not less than ten (10) days before applying for the child's passport:

- (1) File a notice of the passport application with the clerk of the court that issued the custody order.
- (2) Send a copy of the notice to the other party.

(b) The parties may jointly agree in writing to waive the requirements of subsection (a).

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-25**

##### **Petition for emergency placement with person other than noncustodial parent; hearing**

Sec. 25. (a) This section applies if a custodial parent or guardian of a child dies or becomes unable to care for the child.

(b) Except as provided in subsection (d), if a person other than a parent files a petition:

- (1) seeking to determine custody of the child; or
- (2) to modify custody of the child;

that person may request an initial hearing by alleging, as part of the petition, or in a separate petition, the facts and circumstances warranting emergency placement with a person other than the noncustodial parent, pending a final determination of custody.

(c) If a hearing is requested under subsection (b), the court shall set an initial hearing not later than four (4) business days after the petition is filed to determine whether emergency placement of the child with a person other than the child's noncustodial parent should be granted, pending a final determination of custody.

(d) A court is not required to set an initial hearing in accordance with this section if:

- (1) it appears from the pleadings that no emergency requiring placement with a person other than the noncustodial parent exists;
- (2) it appears from the pleadings that the petitioner does not have a reasonable likelihood of success on the merits; or
- (3) manifest injustice would result.

*As added by P.L.146-2006, SEC.16.*

## **IC 31-17-2.2**

### **Chapter 2.2. Relocation**

#### **IC 31-17-2.2-1**

##### **Notice of intent to move residence; modifying orders; attorney's fees**

Sec. 1. (a) A relocating individual must file a notice of the intent to move with the clerk of the court that:

- (1) issued the custody order or parenting time order; or
- (2) if subdivision (1) does not apply, has jurisdiction over the legal proceedings concerning the custody of or parenting time with a child;

and send a copy of the notice to any nonrelocating individual.

(b) Upon motion of a party, the court shall set the matter for a hearing to review and modify, if appropriate, a custody order, parenting time order, grandparent visitation order, or child support order. The court shall take into account the following in determining whether to modify a custody order, parenting time order, grandparent visitation order, or child support order:

- (1) The distance involved in the proposed change of residence.
- (2) The hardship and expense involved for the nonrelocating individual to exercise parenting time or grandparent visitation.
- (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation arrangements, including consideration of the financial circumstances of the parties.
- (4) Whether there is an established pattern of conduct by the relocating individual, including actions by the relocating individual to either promote or thwart a nonrelocating individual's contact with the child.
- (5) The reasons provided by the:
  - (A) relocating individual for seeking relocation; and
  - (B) nonrelocating parent for opposing the relocation of the child.
- (6) Other factors affecting the best interest of the child.

(c) The court may award reasonable attorney's fees for a motion filed under this section in accordance with IC 31-15-10.

*As added by P.L.50-2006, SEC.7.*

#### **IC 31-17-2.2-2**

##### **Initial custody determination**

Sec. 2. (a) If a party provides notice of relocation at an initial hearing to determine custody, the court may consider the factors set forth in this chapter in the court's initial custody determination.

(b) The court may consider a proposed relocation of a child as a factor in determining whether to modify a custody order, parenting time order, grandparent visitation order, or child support order.

*As added by P.L.50-2006, SEC.7.*

### **IC 31-17-2.2-3**

#### **Notice; information requirements**

Sec. 3. (a) Except as provided in section 4 of this chapter, an individual required to file a notice under IC 31-14-13-10 or section 1 of this chapter must:

- (1) send the notice to each nonrelocating individual:
  - (A) by registered or certified mail; and
  - (B) not later than ninety (90) days before the date that the relocating individual intends to move; and
- (2) provide the following information in the notice:
  - (A) The intended new residence, including the:
    - (i) address; and
    - (ii) mailing address of the relocating individual, if the mailing address is different than the address under item (i).
  - (B) The home telephone number of the new residence.
  - (C) Any other applicable telephone number for the relocating individual.
  - (D) The date that the relocating individual intends to move.
  - (E) A brief statement of the specific reasons for the proposed relocation of the child.
  - (F) A proposal for a revised schedule of parenting time or grandparent visitation with the child.
  - (G) A statement that a parent must file an objection to the relocation of the child with the court not later than sixty (60) days after receipt of the notice.
  - (H) A statement that a nonrelocating individual may file a petition to modify a custody order, parenting time order, grandparent visitation order, or child support order.

(b) Except as provided in section 4 of this chapter, if the relocating individual is unable to provide the information required under subsection (a)(2) not later than ninety (90) days before the relocating individual intends to move, the relocating individual shall provide the information in the manner required under subsection (a) not later than ten (10) days after the date that the relocating individual obtains the information required to be provided under subsection (a)(2). However, the relocating individual must provide all the information required under subsection (a)(2) not later than thirty (30) days before the relocating individual intends to move to the new residence.

*As added by P.L.50-2006, SEC.7. Amended by P.L.1-2007, SEC.194.*

### **IC 31-17-2.2-4**

#### **Risk or harm in disclosing information**

Sec. 4. If a court finds that disclosure of the information required under section 3 of this chapter creates a significant risk of substantial harm to the relocating individual or the child, the court may order:

- (1) that the address, the telephone number, or other identifying information of the relocating individual or child not be disclosed in the pleadings, other documents filed in the proceeding, or the final order;

- (2) that the information required under section 3 of this chapter be maintained by the clerk of the court in a secure location separate from the pending case file;
- (3) that the notice requirements under IC 31-14-13-10 or this chapter be waived to the extent necessary to protect the relocating individual or child from significant risk of substantial harm; or
- (4) other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

*As added by P.L.50-2006, SEC.7.*

#### **IC 31-17-2.2-5**

##### **Motion to prevent relocation; burden of proof**

Sec. 5. (a) Not later than sixty (60) days after receipt of the notice from the relocating individual under IC 31-14-13-10 or this chapter, a nonrelocating parent may file a motion seeking a temporary or permanent order to prevent the relocation of a child.

(b) On the request of either party, the court shall hold a full evidentiary hearing to grant or deny a relocation motion under subsection (a).

(c) The relocating individual has the burden of proof that the proposed relocation is made in good faith and for a legitimate reason.

(d) If the relocating individual meets the burden of proof under subsection (c), the burden shifts to the nonrelocating parent to show that the proposed relocation is not in the best interest of the child.

(e) If the nonrelocating parent fails to file a motion under subsection (a), the relocating individual who has custody of the child may relocate to the new residence.

*As added by P.L.50-2006, SEC.7.*

#### **IC 31-17-2.2-6**

##### **Temporary order to restrain or permit relocation**

Sec. 6. (a) If a nonrelocating parent files a motion under section 5 of this chapter, the court, after notice and an opportunity to be heard or after compliance with Trial Rule 65(B), may grant a temporary order restraining the relocation of a child or order the child to be returned to the nonrelocating parent if the court finds:

- (1) that the notice required under IC 31-14-13-10 or this chapter was not served in a timely manner and the parties have not presented an agreement concerning a parenting time schedule;
- (2) that the child has been relocated without:
  - (A) the appropriate notice;
  - (B) an agreement between the parties; or
  - (C) a court order; or
- (3) from an examination of the evidence presented at the temporary hearing, that there is a likelihood that, after a final hearing, the court will not approve the relocation of the child.

(b) The court may grant a temporary order permitting the relocation of the child pending a final hearing if the court:

- (1) determines that the notice required under IC 31-14-13-10 or this chapter was provided in a timely manner;
- (2) issues an order for a revised schedule for temporary parenting time with the child; and
- (3) reviews the evidence presented at the temporary hearing and determines that there is a likelihood that, after the final hearing, the court will approve the relocation of the child.

(c) If the court issues a temporary order authorizing the relocating individual to move, in its final judgment, the court must consider factors:

- (1) other than; or
- (2) in addition to;

the temporary relocation of the child when issuing a final order.

*As added by P.L.50-2006, SEC.7.*

#### **IC 31-17-2.4**

##### **Chapter 2.4. Mediation**

#### **IC 31-17-2.4-1**

##### **Factors in determination**

Sec. 1. Whenever the court issues an order under this article, other than an ex parte order, the court shall determine whether the proceeding should be referred to mediation. In making this determination, the court shall consider:

- (1) the ability of the parties to pay for the mediation services;  
and
- (2) whether mediation is appropriate in helping the parties resolve their disputes.

*As added by P.L.199-1997, SEC.3.*

#### **IC 31-17-2.4-2**

##### **Docketing; extension; report**

Sec. 2. When a case is ordered to mediation, the case shall be placed on the court docket for final hearing. The mediation process must be completed not later than sixty (60) days after the mediation order is entered. However, the sixty (60) day period may be extended by the court upon the court's own motion, upon agreement of the parties, or upon the recommendation of the mediator, but may not be extended beyond the date set for final hearing. Upon completion of the mediation process, the mediator shall promptly file the mediation report.

*As added by P.L.199-1997, SEC.3.*



**IC 31-17-3**

**Repealed**

*(Repealed by P.L.138-2007, SEC.93.)*

### IC 31-17-3.5

#### Chapter 3.5. Security to Secure Custody and Parenting Time Orders

### IC 31-17-3.5-1

#### **Bonds; requirements**

Sec. 1. A bond required under this article to secure enforcement of a custody order or parenting time order must:

- (1) be in writing; and
- (2) be secured by:
  - (A) at least one (1) resident freehold surety; or
  - (B) a commercial insurance company.

*As added by P.L.171-2001, SEC.10. Amended by P.L.68-2005, SEC.41.*

### IC 31-17-3.5-2

#### **Bonds; form**

Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )  
 )  
 )  
IN THE MATTER OF: )  
 )  
 )  
Name of Parent (As the Principal) )  
 )  
Name of Parent (As the Obligee) )  
 )  
 )  
CHILD: )  
 )  
Name of Child )  
 )

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_,  
as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto  
\_\_\_\_\_, as Obligee, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the  
payment of which well and truly to be made we hereby bind  
ourselves and our heirs, administrators, successors, and assigns,  
jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above  
Court in the State of Indiana, County of \_\_\_\_\_, dated \_\_\_\_\_, defining  
custody, parenting time, and support rights regarding the named  
children.

NOW THEREFORE, the conditions of this obligation are such  
that:

1. No right of action on this bond shall be granted for the use  
or benefit of any individual, partnership, corporation, or

- other entity, other than the named Obligee.
2. It is agreed that neither this bond nor the obligation of this bond, nor any interest in this bond, may be assigned without the prior express written consent of the Surety.
  3. Payment under this bond shall be conditioned upon the Obligee's, or the representative of the Obligee's, filing a motion with the court seeking a declaration of forfeiture of the bond and the Court's finding and entry of a final judgment ordering the Principal and Surety to make such payment. A certified copy of the filing shall be provided to the Surety at its address of record. The Surety shall make payment within thirty (30) days of receiving notification of the final judgment directly to a Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.
  4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.
  5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, the Court order expires, or this cause is removed to another jurisdiction.
  6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if said Principal shall faithfully comply with the requirements and conditions of said Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_.

Principal: \_\_\_\_\_ Surety: \_\_\_\_\_

\_\_\_\_\_  
(Name and address of Principal) (Name and address of Surety)

\_\_\_\_\_  
(Signature of Principal) ( C o u n t e r s i g n e d b y  
attorney-in-fact)  
(Surety seal)

Witness:

*As added by P.L.171-2001, SEC.10. Amended by P.L.68-2005, SEC.42.*

### **IC 31-17-3.5-3**

#### **Forfeiture; use of proceeds**

Sec. 3. Upon forfeiture, the proceeds of security, a bond, or other

guarantee ordered to secure enforcement of a custody order or parenting time order under this article may only be used to:

- (1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

*As added by P.L.171-2001, SEC.10. Amended by P.L.68-2005, SEC.43.*

#### **IC 31-17-3.5-4**

##### **Forfeiture; excess proceeds**

Sec. 4. Upon forfeiture, the proceeds of the security, a bond, or other guarantee ordered to secure enforcement of a custody order or parenting time order under this article that are not applied to the expenses described in section 3 of this chapter must be applied toward:

- (1) the child's postsecondary education; or
- (2) the support and maintenance of the child.

*As added by P.L.171-2001, SEC.10. Amended by P.L.68-2005, SEC.44; P.L.2-2007, SEC.363.*

## **IC 31-17-4**

### **Chapter 4. Parenting Time Rights of Noncustodial Parent**

#### **IC 31-17-4-1**

##### **Parenting time rights; in chambers interview of child**

Sec. 1. (a) A parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

(b) The court may interview the child in chambers to assist the court in determining the child's perception of whether parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

(c) The court may permit counsel to be present at the interview. If counsel is present:

- (1) a record may be made of the interview; and
- (2) the interview may be made part of the record for purposes of appeal.

*As added by P.L.1-1997, SEC.9. Amended by P.L.15-2004, SEC.2; P.L.68-2005, SEC.45.*

#### **IC 31-17-4-2**

##### **Modification or denial; restriction of parenting time rights**

Sec. 2. The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development.

*As added by P.L.1-1997, SEC.9. Amended by P.L.68-2005, SEC.46.*

#### **IC 31-17-4-2.5**

##### **Security, bond, or guarantee**

Sec. 2.5. The court may provide in:

- (1) a parenting time order; or
- (2) a modification to a parenting time order;

for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the provisions of the parenting time order.

*As added by P.L.171-2001, SEC.13. Amended by P.L.68-2005, SEC.47.*

#### **IC 31-17-4-3**

##### **Attorney's fees, court costs, and litigation expenses**

Sec. 3. (a) In any action filed to enforce or modify an order granting or denying parenting time rights, a court may award:

- (1) reasonable attorney's fees;
- (2) court costs; and
- (3) other reasonable expenses of litigation.

(b) In determining whether to award reasonable attorney's fees, court costs, and other reasonable expenses of litigation, the court may consider among other factors:

- (1) whether the petitioner substantially prevailed and whether the court found that the respondent knowingly or intentionally violated an order granting or denying rights; and
- (2) whether the respondent substantially prevailed and the court found that the action was frivolous or vexatious.

*As added by P.L.1-1997, SEC.9. Amended by P.L.68-2005, SEC.48.*

#### **IC 31-17-4-4**

##### **Permanent injunction against custodial parent**

Sec. 4. A noncustodial parent who:

- (1) has been granted parenting time rights with a child who lives with the custodial parent;
  - (2) regularly pays support ordered by a court for the child; and
  - (3) is barred by a custodial parent from exercising parenting time rights ordered for the noncustodial parent and the child;
- may file, in the court that has jurisdiction over the dissolution of marriage, an application for an injunction against the custodial parent under Rule 65 of the Indiana Rules of Trial Procedure.

*As added by P.L.1-1997, SEC.9. Amended by P.L.68-2005, SEC.49.*

#### **IC 31-17-4-5**

##### **Temporary restraining order against custodial parent**

Sec. 5. (a) If an application for an injunction has been filed under section 4 of this chapter (or IC 31-1-11.5-26 before its repeal), the court may grant, without notice, upon affidavit of the noncustodial parent, a temporary restraining order restraining the custodial parent from further violation of the parenting time order.

(b) In the affidavit, the noncustodial parent must state under penalties for perjury that:

- (1) the noncustodial parent has been granted parenting time rights with the child; and
- (2) the noncustodial parent regularly pays the support ordered by a court for the child.

*As added by P.L.1-1997, SEC.9. Amended by P.L.68-2005, SEC.50.*

#### **IC 31-17-4-6**

##### **Hearing**

Sec. 6. A hearing upon the restraining order must be held at the earliest convenience of the court.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-4-7**

##### **Security**

Sec. 7. (a) This section does not apply to an order under section 2.5 of this chapter.

(b) A court may not require an applicant for a temporary restraining order or an injunction under section 4 of this chapter (or

IC 31-1-11.5-26 before its repeal) to give security.  
*As added by P.L.1-1997, SEC.9. Amended by P.L.171-2001, SEC.14.*

#### **IC 31-17-4-8**

##### **Contempt**

Sec. 8. A court that finds an intentional violation without justifiable cause by a custodial parent of an injunction or a temporary restraining order issued under this chapter (or IC 31-1-11.5-26 before its repeal):

- (1) shall find the custodial parent in contempt of court;
- (2) shall order the exercise of parenting time that was not exercised due to the violation under this section at a time the court considers compatible with the schedules of the noncustodial parent and the child;
- (3) may order payment by the custodial parent of reasonable attorney's fees, costs, and expenses to the noncustodial parent; and
- (4) may order the custodial parent to perform community restitution or service without compensation in a manner specified by the court.

*As added by P.L.1-1997, SEC.9. Amended by P.L.32-2000, SEC.19; P.L.68-2005, SEC.51.*

#### **IC 31-17-4-9**

##### **Additional remedies**

Sec. 9. The remedies in this chapter are in addition to and do not limit other civil or criminal remedies available to the noncustodial parent.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-4-10**

##### **Missed parenting time; parent in military**

Sec. 10. A noncustodial parent who misses parenting time as the result of participation in an activity of:

- (1) the Indiana National Guard; or
- (2) a reserve component of the armed forces of the United States;

may make up the lost parenting time as provided in IC 10-16-7-22.

*As added by P.L.103-1997, SEC.4. Amended by P.L.2-2003, SEC.72; P.L.68-2005, SEC.52.*

## **IC 31-17-5**

### **Chapter 5. Grandparent's Visitation**

#### **IC 31-17-5-0.2**

##### **Application of certain amendments to prior law**

Sec. 0.2. The amendments made to IC 31-1-11.7-2 (before its repeal, now codified at sections 1, 8, 9, and 10 of this chapter) by P.L.293-1987 apply to the visitation rights of grandparents who have been granted visitation rights before September 1, 1985.

*As added by P.L.220-2011, SEC.502.*

#### **IC 31-17-5-0.3**

##### **Application of certain amendments to prior law**

Sec. 0.3. The amendments made to IC 31-1-11.7-2, IC 31-1-11.7-3, and IC 31-1-11.7-6 (before their repeal, now codified in this chapter) by P.L.270-1989 apply to adoptions in which a final order is issued by a trial court after May 5, 1989.

*As added by P.L.220-2011, SEC.503.*

#### **IC 31-17-5-1**

##### **Right to seek visitation**

Sec. 1. (a) A child's grandparent may seek visitation rights if:

- (1) the child's parent is deceased;
- (2) the marriage of the child's parents has been dissolved in Indiana; or
- (3) subject to subsection (b), the child was born out of wedlock.

(b) A court may not grant visitation rights to a paternal grandparent of a child who is born out of wedlock under subsection (a)(3) if the child's father has not established paternity in relation to the child.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-5-2**

##### **Best interest of the child; in chambers interview of the child**

Sec. 2. (a) The court may grant visitation rights if the court determines that visitation rights are in the best interests of the child.

(b) In determining the best interests of the child under this section, the court may consider whether a grandparent has had or has attempted to have meaningful contact with the child.

(c) The court may interview the child in chambers to assist the court in determining the child's perception of whether visitation by a grandparent is in the best interests of the child.

(d) The court may permit counsel to be present at the interview. If counsel is present:

- (1) a record may be made of the interview; and
- (2) the interview may be made part of the record for purposes of appeal.

*As added by P.L.1-1997, SEC.9. Amended by P.L.15-2004, SEC.3.*

#### **IC 31-17-5-3**



**Petition**

Sec. 3. A proceeding for grandparent's visitation must be commenced by the filing of a petition entitled, "In Re the visitation of \_\_\_\_\_". The petition must:

- (1) be filed by a grandparent entitled to receive visitation rights under this chapter;
- (2) be verified; and
- (3) set forth the following:
  - (A) The names and relationship of:
    - (i) the petitioning grandparent or grandparents;
    - (ii) each child with whom visitation is sought; and
    - (iii) the custodial parent or guardian of each child.
  - (B) The present address of each person named in clause (A).
  - (C) The date of birth of each child with whom visitation is sought.
  - (D) The status under section 1 of this chapter upon which the grandparent seeks visitation.
  - (E) The relief sought.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-5-4****Venue**

Sec. 4. A grandparent seeking visitation rights shall file a petition requesting reasonable visitation rights:

- (1) in a circuit, superior or probate court of the county in which the child resides in a case described in section 1(a)(1), 1(a)(3), or 10 of this chapter; or
- (2) in the court having jurisdiction over the dissolution of the parents' marriage in a case described in section 1(a)(2) of this chapter.

*As added by P.L.1-1997, SEC.9. Amended by P.L.50-2006, SEC.8.*

**IC 31-17-5-5****Service of petition and summons**

Sec. 5. Whenever a petition is filed, a copy of the petition, together with a copy of a summons, shall be served upon the custodial and noncustodial parent or guardian of each child with whom visitation is sought in the same manner as service of summons in civil actions generally.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-5-6****Decree**

Sec. 6. Upon hearing evidence in support of and opposition to a petition filed under this chapter, the court shall enter a decree setting forth the court's findings and conclusions.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-5-7****Modification of order**

Sec. 7. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-5-8**

##### **Paternity proceedings; effect on visitation rights**

Sec. 8. (a) This section applies to a child born out of wedlock.

(b) Visitation rights provided for in section 1 or 10 of this chapter survive the establishment of paternity of a child by a court proceeding other than an adoption proceeding.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-5-9**

##### **Adoption; effect on visitation rights**

Sec. 9. Visitation rights provided for in section 1 or 10 of this chapter survive the adoption of the child by any of the following:

- (1) A stepparent.
- (2) A person who is biologically related to the child as:
  - (A) a grandparent;
  - (B) a sibling;
  - (C) an aunt;
  - (D) an uncle;
  - (E) a niece; or
  - (F) a nephew.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-5-10**

##### **Marriage of child's parents dissolved in another state; right to seek visitation**

Sec. 10. If the marriage of the child's parents has been dissolved in another state, the child's maternal or paternal grandparent may seek visitation rights if:

- (1) the custody decree entered in the action for dissolution of marriage does not bind the grandparent under IC 31-21-3-1 (or IC 31-17-3-12 before its repeal); and
- (2) an Indiana court would have jurisdiction under IC 31-21-5-1 (or IC 31-17-3-3 before its repeal), IC 31-21-5-2, or IC 31-21-5-3 (or IC 31-17-3-14 before its repeal) to grant visitation rights to the grandparent in a modification decree.

*As added by P.L.1-1997, SEC.9. Amended by P.L.138-2007, SEC.35.*

## **IC 31-17-6**

### **Chapter 6. Appointment of Guardians Ad Litem and Court Appointed Special Advocates**

#### **IC 31-17-6-1**

##### **Appointment**

Sec. 1. A court, in a proceeding under IC 31-17-2, IC 31-17-4, this chapter, IC 31-17-7, or IC 31-28-5, may appoint a guardian ad litem, a court appointed special advocate, or both, for a child at any time. *As added by P.L.1-1997, SEC.9. Amended by P.L.133-2008, SEC.9.*

#### **IC 31-17-6-2**

##### **Persons ineligible for appointment**

Sec. 2. A court may not appoint a party to the proceedings, the party's employee, or the party's representative as the:

- (1) guardian ad litem;
- (2) court appointed special advocate;
- (3) guardian ad litem program; or
- (4) court appointed special advocate program;

for a child who is involved in the proceedings.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-3**

##### **Protection of best interests of child; term of appointment**

Sec. 3. A guardian ad litem or court appointed special advocate shall represent and protect the best interests of the child. A guardian ad litem or court appointed special advocate serves until the court enters an order for removal.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-4**

##### **Officers of the court**

Sec. 4. The guardian ad litem or the court appointed special advocate, or both, are considered officers of the court for the purpose of representing the child's interests.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-5**

##### **Representation by attorney**

Sec. 5. The guardian ad litem or the court appointed special advocate may be represented by an attorney. If necessary to protect the child's interests, the court may appoint an attorney to represent the guardian ad litem or the court appointed special advocate.

*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-6-6**

##### **Subpoena powers; presentation of evidence**

Sec. 6. A guardian ad litem or court appointed special advocate appointed by a court under this chapter may subpoena witnesses and present evidence regarding:

- (1) the supervision of the action; or
- (2) any investigation and report that the court requires of the guardian ad litem or court appointed special advocate.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-6-7**

#### **Continuing supervision**

Sec. 7. The court may order a guardian ad litem or court appointed special advocate appointed by a court under this chapter (or IC 31-1-11.5-28 before its repeal) to exercise continuing supervision over the child to assure that the custodial or parenting time terms of an order entered by the court under IC 31-17-2 or IC 31-17-4 (or IC 31-1-11.5 before its repeal) are carried out as required by the court.

*As added by P.L.1-1997, SEC.9. Amended by P.L.68-2005, SEC.53.*

### **IC 31-17-6-8**

#### **Civil immunity**

Sec. 8. Except for gross misconduct:

- (1) a guardian ad litem;
- (2) a court appointed special advocate;
- (3) an employee of a county guardian ad litem or court appointed special advocate program; or
- (4) a volunteer for a guardian ad litem or court appointed special advocate program;

who performs duties in good faith is immune from any civil liability that may occur as a result of the person's performance.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-6-9**

#### **User fee; funds**

Sec. 9. (a) The court may order either or both parents of a child for whom a guardian ad litem or court appointed special advocate is appointed under this chapter to pay a user fee for the services provided under this chapter. The court shall establish one (1) of the following procedures to be used to collect the user fee:

- (1) The court may order the clerk of the court to collect the user fee and deposit the user fee into the county's guardian ad litem fund or court appointed special advocate fund. The fiscal body of the county shall appropriate money collected as user fees under this chapter to the court having jurisdiction over custody actions for the court's use in providing guardian ad litem or court appointed special advocate services, including the costs of representation.
- (2) The court may order either or both parents to pay the user fee to the:
  - (A) guardian ad litem program that provided the services; or
  - (B) court appointed special advocate program that provided the services.
- (3) The court may order either or both parents to pay the user

fee to the individual or attorney guardian ad litem that provided the services.

(b) Money remaining in a county's:

(1) guardian ad litem fund; or

(2) court appointed special advocate fund;

at the end of the county's fiscal year does not revert to any other fund.

(c) If the court orders either or both parents to pay the user fee according to subsection (a)(2) or (a)(3) the program or the individual or attorney guardian ad litem shall report to the court the receipt of payment not later than thirty (30) days after receiving the payment.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-7**

### **Chapter 7. Costs and Attorney's Fees**

#### **IC 31-17-7-1**

##### **Costs and attorney's fees; order for direct payment to attorney**

Sec. 1. (a) The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under IC 31-17-2, IC 31-17-4, IC 31-17-6, or this chapter and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

(b) The court may order the amount to be paid directly to the attorney, who may enforce the order in the attorney's name.

*As added by P.L.1-1997, SEC.9. Amended by P.L.199-1997, SEC.6.*

#### **IC 31-17-7-2**

##### **Exemption for agencies**

Sec. 2. Neither costs nor attorney's fees may be taxed against an agency or its agents that is authorized to maintain proceedings under IC 31-17-2, IC 31-17-4, IC 31-17-6, or this chapter by Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669) and IC 31-25-4-17.

*As added by P.L.1-1997, SEC.9. Amended by P.L.145-2006, SEC.241.*